Appendix A.

Act of February 19, 1875, c. 90, 18 Stat. 330:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all leases of land within the Cattaragus and Allegany reservations in the State of New York, heretofore made by or with the authority of the Seneca Nation of New York Indians, to railroad-corporations, are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad-purposes.

SEC. 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrolton, Great Valley, Salamanca, West Salamanca, and Red House, within said Allegany reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such surveys and locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus, in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of such period, or at the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the

said lands, and shall have the power to lease the same. *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they cannot agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said councillors shall appoint one person, and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs, or assigns, be renewed in the manner hereinbefore provided.

SEC. 4. That said Seneca Nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages to which, by the laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to the rightful possession.

SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of

lands within said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and recoverable by the treasurer of said Seneca Nation and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 8. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

Act of September 30, 1890, c. 1132, 26 Stat. 558:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the leases of land situate within the limits of the villages mentioned in the act of Congress entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases," approved February nineteenth, eighteen hundred and seventy-five, except leases to railroads, shall by the terms of said act be renewable, the same shall be renewable for a term not exceeding ninety-nine years, instead of the term of twelve years, as therein provided, subject to all other terms and conditions of said act.

Act of February 28, 1901, c. 622, 31 Stat. 819:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys which shall belong to the Seneca Nation of New York Indians arising from existing leases or leases that may hereafter be made of lands within the Cattaraugus, Allegany, and Oil Springs reservations, shall be paid to and be recoverable to the United States Indian agent for the New York Indian Agency for and in the name of the said Seneca Nation: *Provided,* That nothing herein contained shall be held to validate or confirm any lease that otherwise may be invalid.

SEC. 2. That from the moneys so received from said leases the said agent shall annually, on the first Wednesday after the first Tuesday in June, pay over to the treasurer of the Seneca Nation the sum of two thousand five hundred dollars for the disposal by its council, and shall distribute the balance of said moneys, after deducting as hereinafter provided, among the heads of families of the Seneca Nation in like manner and under the same conditions that the annuities paid to the said nation by the United States are distributed.

SEC. 3. That the said agent shall give bond to the United States in such sum as may be approved by the Secretary of the Interior, and he shall make an annual report to the Commissioner of Indian Affairs of the

receipt and disbursement of all moneys arising from said leases, and he shall receive annually, as additional compensation, the sum of two hundred and fifty dollars.

SEC. 4. That the treasurer of the Seneca Nation shall annually, on the last Tuesday in April, make a written report to the United States Indian agent of the New York Indian Agency of all moneys received and disbursed by him as treasurer of said Seneca Nation.

SEC. 5. That all Acts or parts of Acts inconsistent with this Act are hereby repealed.

LAWS OF NEW YORK.

CHAP. 188.

AN ACT extending the general laws of the State of New York over lands included in the villages surveyed, located and established on the Allegany Indian Reservation, by United States Commissioners appointed for that purpose, constituting the estate therein when held under lease from the Seneca Nation of Indians, a freehold estate; ratifying and confirming the acts of town, village and school officers concerning such lands and the residents thereof.

PASSED May 2, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. All those parts of the Allegany Indian Reservation included in the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca and Red House, as surveyed, located and established by John Manley, Joseph Scattergood and Henry Shanklin, commissioners appointed by the president of the United States for that purpose pursuant to an act of congress approved February nineteenth, eighteen hundred and seventy-five, are constituted parts of the several towns within which they are located, and all the general laws

of this state are extended over and shall apply to the same. Provided always, that nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

§ 2. All acts of commissioners of highways or other town officers of the towns in which said villages are located, concerning the lands or roads therein, all proceedings incorporating villages on said lands, or of the officers of such villages concerning the same, or under such acts of incorporation; all proceedings forming school districts within such villages, and all acts or proceedings of school officers in such districts heretofore done or performed which would have been legal if such villages or the land included therein had not constituted a part of said reservation, are hereby ratified, legalized and confirmed.

§ 3. Land situate in said villages, held by or under lease from the Seneca Nation of Indians and which the holders are entitled to have renewed at the expiration thereof by virtue of said act of congress are and shall be for all purposes considered a freehold estate and the owners of such leases freeholders, and the right of dower and tenant by curtesy shall attach thereto, and shall upon the death of any person owning the same without having devised it, descend in the same manner as a freehold of inheritance and shall for that purpose be treated as real estate. Provided, however, that the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

Appendix B.

Commencing with the original Constitution of 1777, and until 1938, the State Constitution continuously provided:

> "No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made of, or with the Indians, shall be valid unless made with the authority and with the consent of the Legislature."

Constitution of the United States, adopted in 1789, Art. I, § 8 (3):

> "The Congress shall have power * * *to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Indian non-intercourse act, adopted by Congress in 1802 (2 Stat. 145 § 19):

> "And be it further enacted, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states * * *."

N. Y. Laws of 1822, ch. 204:

> "The sole and exclusive jurisdiction, of trying and punishing all and every person, of whatsoever nation or tribe, for crimes and offenses committed within any part of this state, except only such crimes and offenses as are or may be cognizable in courts deriving jurisdiction under the constitution and laws of the United States, of right belongs to, and is exclusively vested in the courts of justice of this state, organized under the constitution and laws thereof."

Report of House Committee on Indian Affairs in 1830 (21st Cong. 1st Sess., House Doc. No. 227), speaking of the law quoted above:

> "The law declaring the jurisdiction of that State, has been enacted several years, and the committee do not find that its validity has ever been seriously questioned."

President JACKSON, in his Second Annual Message, 1830 (Messages of Presidents, Richardson, Vol. II, page 522):

> "No act of the General Government has ever been deemed necessary to give the States jurisdiction over the persons of the Indians. That they possess by virtue of their sovereign power within their own limits in as full a manner before as after the purchase of the

Indian lands; nor can this government add to or diminish it."

President JACKSON, in a message to the Senate dated February 22, 1831 (Ibid., page 539):

"In the State of New York, where several tribes have resided it has been the policy of the Government to avoid entering into quasi treaty engagements with them, barely appointing commissioners occasionally on the part of the United States to facilitate the objects of the State in its negotiations with them."

N. Y. Laws of 1849, ch. 378:

"All the powers and duties which by any law of this state are granted to or charged upon the chiefs of the Seneca Nation of Indians, residing on the Cattaraugus and Allegany reservationss in this state, are hereby transferred and granted to and charged upon the president and councillors of the Seneca Nation of Indians, holding or who shall hold office under the constitution of said nation, of the fourth day of December last, and all powers and duties granted to or charged upon said chiefs in council by the laws of this State, are hereby transferred and granted to and charged upon such president and councillors in council assembled."

The Supreme Court, in 1858, in case of *State of New York v. Dibble*, 62 U. S. 366, 370:

"Notwithstanding the peculiar relation which these Indian nations hold to the Government of the United States, the State of New York had the power of a sovereign over their persons and property, so far as it was necessary to preserve the peace of the Commonwealth, and protect these feeble and helpless bands from imposition and intrusion. The power of a State to make such regulations to preserve the peace of the community is absolute, and has never been surrendered."

A resolution of the N. Y. Legislature in 1871 (Assembly Journal, pages 122-123) provided:

"Whereas, a portion of the Allegany reservation, occupied by the Seneca Nation of Indians, has become popu-

lated by the white people; and, whereas, they have been induced to make settlements thereon (especially in the Town of Salamanca), on account of the natural business location of the place, and a ratification by the Legislature of the State of New York of leases made by them with the Seneca Nation of Indians; and, whereas, the sale of this reservation was recommended by the Indian Agent in 1868; and, whereas, it has become a matter of importance to the white settlers who have made improvements and invested their means in business pursuits thereon; therefore,

"Resolved, if the Senate concur, That the Senators from this State in Congress be instructed, and the Representatives be requested to procure the passage of same act, or the formation of a treaty with the Seneca Nation of Indians, whereby title may be obtained to the whole, or a portion of the Allegany reservation, or such relief secured for white settlers as the circumstances demand."

The appellant's brief in *Ryan v. Knorr* (19 Hun 540, decided by the Supreme Court of N. Y., 4th Dept., 1880), which relied upon the Act of Congress of 1875, made it an appendix to the brief, and said:

"This court took judicial notice in Nelson v. Down, decided at Special Term, May, 1874, by Mr. Justice Barker (not reported) that a considerable community had located upon and were doing business on that part of the Reservation now included in the villages of Great Valley and Salamanca, who had been induced to make homes on those lands in view of advantages derived from railroad connections made at that point. That the action of the Legislative department of this State had been with the view of making the title and possession of the citizens valid, without intention to disturb and wrong the Indians or place the State in hostility to the Laws, Treaties and Government of the U. S.

'State action alone cannot accomplish the result so much desired, that is, that a portion of the lands be alienable and the subject of lawful traffic. One of the natural channels of trade and railroad transportation through the State is over these lands, and for the purpose of favoring and facilitating the same,

> the State should, through its executive offices, take appropriate steps to secure the aid and co-operation of the United States in extinguishing, at an early day, the Indian title, and opening up a portion of this Reservation to the public. Barker, Justice.'
>
> "This court may well assume that the Act of Congress, following so soon after the decision of Mr. Justice Barker, was intended to remedy the evil pointed out by him, and that Congress intended to make the 'title and possession' of these inhabitants valid."

Other contemporaneous sources upon the Acts of 1875 and 1890 are: 1872 Report, Cmr. Ind. Aff. pages 200-201; Cong. Globe, Feb. 24, 1873, page 1666; Cong. Rec., May 4, 1874, page 3581; H. R. No. 478, 43rd Cong., 1st Sess.; S. Misc. Doc. No. 122, same session; 1874 Report, Comr. Ind. Aff., pages 23-24, 183-184; N. Y. Assembly Doc. No. 30 of 1875; House Misc. Doc. No. 75, 43rd Cong., 2nd Sess.; Cong. Rec., Feb. 2, 1875, pages 908-921; also Feb. 16, 1875, page 1321; 1877 Report, Comr. Ind. Aff., page 164; also 1880 Report, page 136; H. R. No. 2344, 49th Cong., 1st Sess.; S. Report No. 1680, 51st Cong., 1st Sess.; 1891 Report, Bd. Ind. Comrs., pages 18-25; 1892 Report, Comr. Ind. Aff., pages 338-347.

Mr. John R. T. Reeves, reporting to the Commissioner of Indian Affairs in 1914 (63rd Cong., 3rd Sess., House Doc. No. 1590, page 14):

> "Conditions on the remaining reservations show a crying need for reform. Naturally one casts about for the reasons why these conditions should have so long been permitted to continue. First among these we find the question of jurisdiction over these Indians, State and Federal. Much needless confusion exists, a pretty general impression prevailing that the State has exclusive jurisdiction. This seems to have arisen from two causes, first, because New York was one of the Thirteen Original Colonies and the title to the lands involved never was in the Fed-

eral Government, and secondly, because the State has exercised jurisdiction, while the Federal Government, to a large extent, has not. * * *. In brief, the principle involved may be broadly stated, that all State laws beneficial to Indians will be upheld, while those of a detrimental nature will be scrutinized with greater care."

HON. CUTHBERT W. POUND, associate judge of N. Y. Court of Appeals, in an article in 22 Columbia Law Review (1922), pages 101-102:

"Conflicting protectorates thus contend with the Indian nations themselves for supremacy. * * * The present confusion and uncertainty discredits the law suit between individuals as a means of deciding great questions of state and national jurisdiction. Many cases in the lower state and federal courts remain unappealed to the United States Supreme Court. * * * The nation owes a duty to its wards if it continues to treat the New York Indians as such, either to enact a code of civil and criminal law for the Indian reservations, or to subject them to state law, or to put an end to the tribal relations and leave the state supreme over the individual Indians as it alone has power to do."

The Supreme Court, in 1925, in case of *U. S. ex rel. Kennedy v. Tyler*, 269 U. S. 13, 16-17:

"It is enough for present purposes to say that the State of New York, as early as 1849, at the request of the Indians, assumed governmental control of them and their property, passed laws creating and defining the jurisdiction of the peacemaker's courts, administered those laws through its courts, and that Congress has never undertaken to interfere with this situation or to assume control."

Secretary of the Interior, RAY LYMAN WILBUR, in a letter to Senate Committee on Indian Affairs, appearing in U. S. Daily of October 18, 1929:

"The situation with respect to the Indians in the State of New York is somewhat peculiar. * * * the

State of New York has dealt directly with these Indian tribes claiming lands within her borders * * * no protest or opposition thereto has ever been raised, at least in so far as the legislative and executive branches of the Federal Government are concerned.

The State of New York has always assumed the burden of establishing and maintaining schools for the education of the Indian youth within her borders; has constructed improved highways through the reservations there and to some extent at least has enforced sanitation, health and other public measures of this kind among these people; all without expense to the Federal Government. In short, the State has heretofore exercised the usual prerogatives of sovereignty and jurisdiction over these Indians, while the Federal Government to a large extent has not. * * * This Department has not felt empowered to assume active control of the situation there, such as is now exercised over most of the other Indians of the United States. * * *

Congress undoubtedly has ample power and jurisdiction over the Indians in New York to enact such legislation as may be deemed necessary in connection with their affairs. Whether that should be by way of increasing Federal activities in their behalf or by strengthening the authority and prerogative of the State in the matter, should be seriously considered. In view of the fact that the State has heretofore always assumed the right to exercise sovereignty and jurisdiction over these people, I am strongly moved to recommend that the activities of the State in this respect be in no manner curtailed."